

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

---

Prepared By: The Professional Staff of the Committee on Appropriations

---

**BILL:** PCS/CS/SB 48 (604240)

**INTRODUCER:** Appropriations Committee (Recommended by Appropriations Subcommittee on Education); Education Committee; and Senator Diaz and others

**SUBJECT:** Educational Scholarship Programs

**DATE:** March 3, 2021

**REVISED:** \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Sagues</u>	<u>Bouck</u>	<u>ED</u>	<u>Fav/CS</u>
2.	<u>Underhill</u>	<u>Elwell</u>	<u>AED</u>	<u>Recommend: Fav/CS</u>
3.	<u>Underhill</u>	<u>Sadberry</u>	<u>AP</u>	<u>Pre-meeting</u>

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

---

**I. Summary:**

PCS/CS/SB 48 consolidates student scholarship programs and provides parents with more flexibility to meet the educational needs of their child. The bill merges the John M. McKay Scholarship Program for Students with Disabilities (McKay program) with the Gardiner Scholarship Program (Gardiner program) and creates a new scholarship program, the McKay-Gardiner Scholarship Program (McKay-Gardiner program). The bill incorporates the Florida Tax Credit Scholarship Program (FTC program) and Hope Scholarship Program (Hope) into the Family Empowerment Scholarship Program (FES program). In addition, the bill:

- Establishes both scholarship programs as education savings accounts.
- Provides that eligible families may receive an award for students enrolled in a public school, a private school, or a home education program.
- Specifies that recipients of a scholarship during the 2020-2021 school year are eligible for a scholarship under the appropriate consolidated program for the 2021-2022 school year.
- Increases the scholarship awards to 97.5 percent of the per-student-funding calculation and authorizes up to 2.5 percent for administrative costs incurred by nonprofit scholarship funding organizations (SFOs).
- Combines eligibility requirements from the McKay and Gardiner scholarship programs to establish the McKay-Gardiner program student eligibility requirements and award priorities.
- Modifies the FES program student eligibility requirements and award priorities to incorporate provisions of the FTC program and Hope program.

- Establishes the maximum number of McKay-Gardiner program awards at 50,000 full-time equivalent (FTE) students with an annual scholarship growth rate of one percent of the total exceptional student education student FTE, not including gifted.
- Establishes the maximum number of FES program awards at 175,000 full-time equivalent (FTE) students to incorporate the FTC program and Hope students and maintains the current FES program annual growth rate of one percent of the state's total public school student FTE enrollment.
- Establishes common accountability criteria across scholarship programs.
- Requires the Auditor General to conduct an operational audit of each nonprofit SFO at least once every three years.

The impact on state funding is indeterminate. The state funding will depend on an official estimate of student FTE participating in the scholarship programs for the 2021-2022 school year, an official estimate of the amount of revenue that will be transferred to the Florida Education Finance Program (FEFP), and the amount of state funds allocated to the FEFP during the appropriation process. See Section V.

The bill takes effect on July 1, 2021.

## II. Present Situation:

The present situation for the relevant portions of the bill is discussed under the Effect of Proposed Changes of this bill analysis.

## III. Effect of Proposed Changes:

### Scholarships for Students with Disabilities

#### Present Situation

#### *The John M. McKay Scholarship for Students with Disabilities Program*

The McKay program was established in 1999 and provides public school students with a defined disability<sup>1</sup> and an Individual Education Plan (IEP)<sup>2</sup> or a 504 accommodation plan issued under s.

---

<sup>1</sup> Students with disabilities include K-12 students who are documented as having an intellectual disability; a speech impairment; a language impairment; a hearing impairment, including deafness; a visual impairment, including blindness; a dual sensory impairment; an orthopedic impairment; another health impairment; an emotional or behavioral disability; a specific learning disability, including, but not limited to, dyslexia, dyscalculia, or developmental aphasia; a traumatic brain injury; a developmental delay; or autism spectrum disorder. Section 1002.39(1), F.S.

<sup>2</sup> All students who are between the ages of three to 21 and have a disability have the right to a free, appropriate public education. Section 1003.5716, F.S. The IEP is the primary vehicle for communicating the school district's commitment to addressing the unique educational needs of a student with a disability. Florida Department of Education, *Developing Quality Individual Education Plans* (2015), available at <http://www.fldoe.org/core/fileparse.php/7690/urlt/0070122-qualityieps.pdf>, at 9.

504 of the Rehabilitation Act of 1973<sup>3</sup> the option to attend a different public school or attend a private school using a state funded school voucher scholarship.<sup>4</sup>

### Student Eligibility

A student is eligible for an award under the McKay program if:

- The student has an Individual Education Plan (IEP), or a 504 accommodation plan;
- The student has spent the prior school year in attendance at a Florida public school or the Florida School for the Deaf and Blind; and
- The parent has obtained acceptance for admission of their child to a private school that is eligible to participate in the McKay Scholarship program.<sup>5</sup>

### Program Prohibitions

A student is not eligible for an award under the McKay program if the student:

- Is enrolled in a Department of Juvenile Justice (DJJ) program or the Florida School for the Deaf and Blind;
- Participates in a home education or private tutoring program, or a virtual school that receives state funding unless the student is enrolled in no more than two courses per year;
- Does not have regular or direct contact with teachers;
- Is issued a temporary 504 accommodation plan valid for 6 months or less; or
- Receives any other educational scholarship pursuant to law.<sup>6</sup>

### Eligibility Term

The term of the scholarship continues until the student returns to public school, graduates from high school, or reaches 22 years of age.<sup>7</sup>

### School District Obligations

School districts are required to comply with multiple obligations, including all of the following:

- Notifying parents of the scholarship.
- Providing IEP evaluation and student assessment services.
- Allowing the parent to enroll their child in a public school other than the one assigned and provide transportation if the school chosen is consistent with the district school board's choice plan.
- Allowing the parent to enroll their child in a public school in an adjacent school district.<sup>8</sup>

---

<sup>3</sup> U.S. Department of Labor, Section 504, Rehabilitation Act of 1973 *available at* <https://www.dol.gov/agencies/oasam/centers-offices/civil-rights-center/statutes/section-504-rehabilitation-act-of-1973> (last visited Jan. 28, 2021). The Section 504 plan identifies the services and accommodations necessary for a student to access instruction and may include accommodations in the classroom and for local and state assessments. Florida Department of Education, *Accommodations, Assisting Students with Disabilities* (2018), *available at* <http://www.fldoe.org/core/fileparse.php/7567/urlt/0070069-accomm-educator.pdf>. at 3.

<sup>4</sup> Section 1002.39(1), F.S.

<sup>5</sup> Section 1002.39(2), F.S.

<sup>6</sup> Section 1002.39(3), F.S.

<sup>7</sup> Section 1002.39(4), F.S.

<sup>8</sup> Section 1002.39(5), F.S.

In addition, the school district is required to report all students to the Department of Education (DOE) who are attending a private school using a McKay Scholarship.<sup>9</sup>

#### Department of Education Obligations

The DOE is responsible for administering the program, including:

- Cross-checking the list of participating students against the public school enrollment prior to each scholarship payment to avoid duplication; and<sup>10</sup>
- Making quarterly scholarship payments to the private school of the parent's choice.<sup>11</sup>

#### Private School Obligations

Private schools participating in the scholarship program must comply with the general laws governing private schools, pursuant to s. 1002.421, F.S., and must provide all documentation required for a student's participation, including the student fee schedule.<sup>12</sup>

#### Parent and Student Obligations

A parent is exercising his or her parental choice to enroll his or her child in a private school, and is responsible for:

- Applying for admission to a private school;
- Remaining in attendance at the private school throughout the school year unless excused for illness or other good cause; and
- Restrictively endorsing the warrant to the private school.<sup>13</sup>

#### Transition-to-work Program

Students who are between the ages of 17 and 22 may participate in a transition-to-work program offered through their private school. The transition-to-work program includes academic instruction, work skills training, and a volunteer or paid work experience.<sup>14</sup>

#### Scholarship Funding and Payment

The McKay program is funded through the Florida Education Finance Program (FEFP) and administered by the DOE.<sup>15</sup> The calculation of the awards are based on the base student allocation, the student's grade level, matrix level of services cost factors, and district cost differential for the school district to which the student was assigned, and funding from selected categorical programs.

---

<sup>9</sup> Section 1002.39(10)(c), F.S.

<sup>10</sup> Section 1002.39(6), F.S.

<sup>11</sup> Section 1002.39(10)(e), F.S.

<sup>12</sup> Section 1002.39(7), F.S.

<sup>13</sup> Section 1002.39(8), F.S.

<sup>14</sup> Section 1002.39(9), F.S.

<sup>15</sup> The Florida Education Finance Program (FEFP) is the mechanism that allocates the state appropriation to each school district throughout the year based on reported student enrollments.

During the 2019-2020 school year, \$221.5 million in scholarship payments were distributed to 1,547 private schools serving 30,185 students. The average scholarship for a student with an IEP was \$8,473. The average scholarship for a student with a 504 accommodation plan was \$4,676.<sup>16</sup>

### ***The Gardiner Scholarship Program***

The Gardiner program was established in 2014 to provide eligible students with a disability<sup>17</sup> a scholarship to meet the individual educational needs of the student through an education savings account.

#### Student Eligibility

In order to be eligible for a scholarship a student must:

- Be a Florida resident;
- Be at least three years of age before September 1 or eligible to enroll in kindergarten through grade 12,
- Have a defined disability; and
- Have an IEP written in accordance the rules of the State Board of Education (SBE)<sup>18</sup> or the rules of another state; or
- Have the diagnosis of a specified disability from a physician or psychologist who holds an active license.<sup>19</sup>

#### Program Prohibitions

A student is not eligible for an award under the Gardiner program if the student is:<sup>20</sup>

- Enrolled in a public school, including the Florida Virtual School;
- Enrolled in a DJJ program or the Florida School for the Deaf and Blind; or
- Receiving any other educational scholarship pursuant to law.<sup>21</sup>

A parent may not transfer any prepaid college plan or college savings account that contains funds contributed from the Gardiner Scholarship to another beneficiary. In addition, a parent may not receive a payment, refund or rebate from an approved provider of any services under the program.<sup>22</sup>

<sup>16</sup> Florida Department of Education, Office of Independent Education and Parental Choice, *McKay Scholarship Program* (2020), available at <https://www.fldoe.org/core/fileparse.php/5606/urlt/McKay-Aug.pdf>.

<sup>17</sup> Disability means, for a 3- or 4-year-old child or for a student in kindergarten to grade 12, autism spectrum disorder, as defined in the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition, published by the American Psychiatric Association; cerebral palsy; Down syndrome; an intellectual disability; Phelan-McDermid syndrome; Prader-Willi syndrome; spina bifida; being a high-risk child; muscular dystrophy; Williams syndrome; rare diseases which affect patient populations of fewer than 200,000 individuals in the United States, as defined by the National Organization for Rare Disorders; anaphylaxis; deaf; visually impaired; traumatic brain injured; hospital or homebound; or identification as dual sensory impaired. The term “hospital or homebound” includes a student who has a medically diagnosed physical or psychiatric condition or illness and who is confined to the home or hospital for more than 6 months. Section 1002.385(2), F.S.

<sup>18</sup> Rule 6A-6.0961, F.A.C. See also Rules 6A-6.03028, 6A-6.030281, 6A-6.03029, and 6A-6.03311, F.A.C.

<sup>19</sup> Florida Department of Education, Office of Independent Education and Parental Choice, *Gardiner Scholarship Program* (2020), available at <http://www.fldoe.org/core/fileparse.php/5606/urlt/Gardiner.pdf>. See s. 1002.385(3), F.S.

<sup>20</sup> Section 1002.385(4), F.S.

<sup>21</sup> Section 1002.385(4), F.S.

<sup>22</sup> Section 1002.385(11), F.S.

Authorized Uses of Funds

Scholarship funds provided through an education savings account must be used to meet the individual needs of an eligible student and may include:<sup>23</sup>

- Instructional materials;
- Curriculum;
- Specialized services, programs, and courses;<sup>24</sup>
- Tuition and fees;<sup>25</sup>
- Transition services provided by job coaches;<sup>26</sup> and
- Contributions to a college prepaid account.

Eligibility Term

The term of the scholarship continues until one of the following occurs:

- The parent does not renew scholarship eligibility;
- The nonprofit SFO determines that the student is ineligible;
- The Commissioner of Education (commissioner) suspends or revokes scholarship participation or use of funds;
- The student's parent fails to comply with parent and student responsibilities for scholarship participation;
- The student enrolls in a public school; or
- The student graduates from high school or attains 22 years of age.<sup>27</sup>

Any remaining funds revert to the state after denial or revocation of scholarship eligibility by the commissioner for fraud or abuse, or after three consecutive fiscal years in which an account has been inactive or three consecutive years after high school completion or graduation during which the student is not enrolled in an eligible postsecondary educational institution or a program offered by the institution.<sup>28</sup>

School District Obligations

Upon request, school districts are required to develop an IEP and a matrix of services evaluation, and provide student assessment services.<sup>29</sup>

---

<sup>23</sup> Section 1002.385(5), F.S.

<sup>24</sup> *Id.* Specialized services may include applied behavior analysis, services provided by speech-language pathologists, occupational therapy services, services provided by physical therapists, and services provided by listening and spoken language specialists. Specialized programs and courses include summer and after-school education programs and music and art therapy.

<sup>25</sup> Tuition or fees may include full-time or part-time enrollment in a home education program, an eligible private school, an eligible postsecondary educational institution or a program offered by the postsecondary institution, a private tutoring program, a virtual program, part-time tutoring, assessments, specialized programs including Voluntary Prekindergarten Education programs. Section 1002.385(5), F.S.

<sup>26</sup> "Transition services" means a coordinated set of activities for a student, designed within an outcome-oriented process, that promote movement from school to post-school activities, including postsecondary education; vocational training; integrated employment; supported employment; continuing and adult education; adult services; independent living, or community participation. Section 413.20(26), F.S.

<sup>27</sup> Section 1002.385(6), F.S.

<sup>28</sup> *Id.*

<sup>29</sup> Section 1002.385(7), F.S.

### Private School Obligations

Private schools participating in the scholarship program must comply with the general laws governing private schools, pursuant to s. 1002.421, F.S., and must make provisions for students to take a nationally norm-referenced test and report the scores to the parent.<sup>30</sup>

### Department of Education Obligations

The DOE has multiple obligations, including all of the following:

- Maintaining a list of approved providers on the DOE website.
- Requiring each nonprofit SFO to verify eligible expenditures.
- Investigating any written complaint.
- Requiring quarterly reports by nonprofit SFOs that would include information related to participants, awards, expenditures, and types of providers.
- Compare the list of participating students against the public school enrollment lists, Voluntary Prekindergarten Education (VPK) enrollment lists, and the list of students participating in school choice scholarship programs prior to each scholarship payment to avoid duplication.<sup>31</sup>

### Commissioner of Education Obligations

The commissioner may suspend or revoke the participation in the Gardiner program of students, parents, nonprofit SFOs, and approved providers.<sup>32</sup>

### Parent and Student Obligations

Parents must meet participation requirements for the Gardiner program, which include annually submitting a notarized, sworn compliance statement affirming:

- The student is enrolled in a program meeting attendance requirements;
- Funds are used as authorized;
- The parent is responsible for the child's education by meeting specified requirements; and
- The student remains in good standing with the provider or school.<sup>33</sup>

In addition, the parent is responsible for all of the following:

- Filing an application for initial program participation.
- Notifying the school district that the student is participating in the Gardiner program.
- Enrolling his or her child in an eligible VPK program or private school, if choosing this option.
- Renewing participation in the program annually.
- Procuring the services necessary to educate the student.
- Paying expenses in excess of the amount of the Gardiner Scholarship.<sup>34</sup>

---

<sup>30</sup> Section 1002.39(8), F.S.

<sup>31</sup> Section 1002.39(9), F.S.

<sup>32</sup> Section 1002.39(10), F.S.

<sup>33</sup> Section 1002.385(11), F.S.

<sup>34</sup> Section 1002.385(11), F.S.

### Scholarship-funding Organization Obligations

The scholarship is directly administered by state-approved nonprofit scholarship funding organizations (SFOs), which have multiple obligations, including all of the following:

- Reviewing applications to determine student eligibility.
- Notifying parents of their receipt of a scholarship.
- Establishing deadlines for parents to confirm participation.
- Awarding scholarships based on established priorities.
- Maintaining separate accounts for each eligible student.
- Verifying qualifying educational expenditures.
- Returning any remaining program funds to the DOE.
- Notifying parents about the availability of requesting an IEP.
- Documenting each student's eligibility for a scholarship.<sup>35</sup>

The nonprofit SFO is required to award scholarship funds in the following priority order:

1. Renewing students from the previous school year.
2. Students retained on the previous school year's wait list.
3. Newly approved applicants.
4. Late-filed applicant.

### Auditor General Obligations

The Auditor General is required to conduct an annual operational audit of accounts and records of each nonprofit SFO that participates in the program.<sup>36</sup>

### Scholarship Funding and Payment

The funding amount is based on the student's matrix level of services. For a student without a matrix of services, the funding is calculated based on the amount to support Level III services. The amount of the scholarship award is equal to 90 percent of the calculated funding amount.<sup>37</sup> Once the scholarship has been verified and approved, the full amount of the award is deposited into the student's account. The nonprofit SFO may use up to three percent of the total amount of all program scholarships awarded for administrative expenses. The funds used for administrative expenses must originate from eligible tax credit contributions authorized under the FTC program and Hope program.<sup>38</sup>

The Gardiner program has grown significantly over the seven years since it was established. For the 2014-2015 school year, scholarships totaling \$15 million were awarded to 1,559 students.<sup>39</sup> For the 2020-2021 school year, \$184.1 million has been awarded to 17,508 students through scholarships. The average scholarship amount is approximately \$10,464 per student.<sup>40</sup>

---

<sup>35</sup> See s. 1002.385(12), F.S.

<sup>36</sup> Section 1002.385(14), F.S.

<sup>37</sup> Section 1002.385(13), F.S.

<sup>38</sup> Section 1002.395(6)(j), F.S.

<sup>39</sup> Florida Department of Education, Office of Independent Education and Parental Choice, *Gardiner Scholarship Program* (2020), available at <https://www.fldoe.org/core/fileparse.php/5606/urlt/Gardiner.pdf>.

<sup>40</sup> *Id.* Data for 2020-2021 is current as of Nov. 16, 2020.



## **Effect of Proposed Changes**

The bill repeals s. 1002.385, F.S., relating to the Gardiner Scholarship Program, and s. 1002.39, F.S., relating to the John M. McKay Scholarships for Students with Disabilities Program, and creates a new education savings account scholarship program: s. 1002.381, F.S., relating to the McKay-Gardiner Scholarship Program (McKay-Gardiner).

### ***McKay-Gardiner Scholarship Program***

The bill merges the McKay and the Gardiner scholarship programs into a single scholarship program, the McKay-Gardiner Scholarship Program, with a common set of eligibility requirements and scholarship award funding structure.

### Student Eligibility

To be eligible for receipt of a scholarship, a student must be a Florida resident, be three or four years of age or eligible to enroll in kindergarten through grade 12, and have a disability as specified in law that is documented through one of the following:

- An IEP<sup>41</sup> written in accordance to the rules of the SBE<sup>42</sup> or the rules of another state;
- A diagnosis of a defined disability from a physician or psychologist who holds an active license; or
- A 504 accommodation plan issued under s. 504 of the Rehabilitation Act of 1973.<sup>43</sup>

The bill specifies the following priority order for awarding scholarships:

- A student who received a McKay or Gardiner program scholarship in the prior year;
- A student retained on the previous school year's wait list; and
- Other eligible students.

### Program Prohibitions

Similar to the Gardiner program,<sup>44</sup> the bill specifies that a student is not eligible for an award under the McKay-Gardiner program if he or she is enrolled in a public school or DJJ program, issued a temporary 504 accommodation plan, does not have regular or direct contact with teachers unless enrolled in a transition-to-work program, or is receiving any other educational scholarship pursuant to state law.

### Authorized Uses of Funds

The bill maintains that the scholarship is directly administered by state-approved nonprofit SFOs. Similar to the Gardiner program,<sup>45</sup> scholarship funds can be used to meet the education needs of students, which in addition to all authorized uses under the Gardiner program, include:

- School equipment and supplies
- Digital devices and internet access.
- Teacher's manuals.

<sup>41</sup> *Supra* note 20.

<sup>42</sup> Rule 6A-6.0961, F.A.C. *See also* Rules 6A-6.03028, 6A-6.030281, 6A-6.03029, and 6A-6.03311, F.A.C.

<sup>43</sup> *Supra* note 21.

<sup>44</sup> *See* Section 1002.385(4), F.S.

<sup>45</sup> *See* Section 1002.385(5), F.S.

- Tuition and fees for a private virtual school.
- A part-time tutor approved by the DOE.
- Classes related to art, music, or theater.
- Fees for summer and after-school programs.
- Transition services provided by private schools or job coaches.
- Transportation expenses not to exceed \$750 per year.

#### Eligibility Term

The term of the scholarship under the bill remains similar to the conditions for termination under the Gardiner program.<sup>46</sup>

#### School District Obligations

School districts must also continue to notify parents about the scholarship and provide IEP evaluation and assessment services, upon request. In addition, school districts are required to accept the diagnosis from a licensed professional and consider the service plan recommended for a student requesting an IEP evaluation. The bill requires school districts to notify parents about the scholarship and removes the requirement for school districts to report scholarship students for funding.

#### Private School Obligations

Private schools participating in the scholarship program must continue to comply with current law,<sup>47</sup> and under the bill may discount tuition if the private school deems it necessary.

#### Department of Education Obligations

The bill requires the DOE to distribute scholarship funds on a quarterly basis, and adds requirements from the FES program and the FTC program to maintain and publish a list of nationally norm-referenced tests identified for purposes of satisfying assessment requirements, verify nonprofit SFO eligibility, and maintain scholarship information on the DOE website. Additionally, the bill maintains DOE obligations from the Gardiner program, including:

- Maintaining a list of approved providers.
- Requiring nonprofit SFOs to verify eligible educational expenses.
- Requiring quarterly reports of nonprofit SFOs.
- Cross-checking student participation to avoid duplicate payments to nonprofit SFOs.
- Investigating written complaints by a parent, student, private school, public school, school district, nonprofit SFO, provider, or other party.

#### Commissioner of Education Obligations

The bill maintains that the commissioner may suspend or revoke the participation in the program of students, parents, nonprofit SFOs, and approved providers.

---

<sup>46</sup> See Section 1002.385(6), F.S.

<sup>47</sup> Section 1002.421, F.S.

Parent and Student Obligations

The bill requires parents to meet a number of requirements similar to the Gardiner program,<sup>48</sup> which include annually submitting a sworn compliance statement that affirms:

- The student is enrolled in a program meeting attendance requirements.
- Funds are used as authorized.
- The parent is responsible for the child's education by meeting specified requirements.
- The student remains in good standing with the provider or school.

In addition, the parent is responsible for the following:

- Filing an application for initial program participation.
- Notifying the school district that the student is participating in the program.
- Enrolling his or her child in an eligible VPK program or private school, if choosing this option.
- Renewing participation in the program annually by a date set and in a format determined by the SFO.
- Procuring the services necessary to educate the student.
- Paying expenses in excess of the amount of the scholarship.

Scholarship-funding Organization Obligations

Under the bill, nonprofit SFOs participating in the McKay-Gardiner program may use up to 2.5 percent of the student generated funding for administrative purposes and must comply with a number of requirements to administer the program:

- From the FTC program:
  - Complying with federal antidiscrimination provisions.<sup>49</sup>
  - Complying with background check requirements.
  - Prohibiting an owner or operator from participating in the program or restricting scholarships.
  - Providing an annual financial audit conducted by an independent certified public accountant to the Auditor General.
  - Monitoring compliance of private schools.
  - Notifying the DOE of any violations of law.
  - Having operated for at least three years without any material audit finding in order to use specified funds for administrative purposes.
  - Maintaining a single surety bond.<sup>50</sup>
- From the Gardiner program:
  - Maintaining separate accounts for students.
  - Receiving applications, determining eligibility, and awarding scholarships.
  - Verifying qualifying educational expenditures.
  - Returning program funds as required.
  - Notifying parents of IEP evaluations and reevaluations.
  - Submitting timely reports to the DOE and Auditor General.<sup>51</sup>

---

<sup>48</sup> See Section 1002.385(11), F.S.

<sup>49</sup> 42 U.S.C. s. 2000d.

<sup>50</sup> Section 1002.395(4), F.S.

<sup>51</sup> Section 1002.385(12), F.S.

The bill clarifies that the SFO is a renewing organization if it was approved by the State Board of Education for the 2021-2022 fiscal year. In addition, the bill retains the nonprofit SFO application process from the FTC program,<sup>52</sup> and allows a child of a private school owner or operator to apply for a scholarship if he or she meets the eligibility requirements.

#### Auditor General Obligations

Similar to public school districts, the bill requires the Auditor General to conduct an operational audit on an approved nonprofit SFO at least once every three years,<sup>53</sup> rather than annually as currently required under the Gardiner program.

#### Transition-to-work Program

The bill maintains the opportunity from the McKay program for students who are between the ages of 17 and 22 to participate in a transition-to-work program offered through their private school or job coach. The transition-to-work program includes academic instruction, work skills training, and a volunteer or paid work experience.

#### Scholarship Funding and Payment

The bill establishes the McKay-Gardiner program for up to 50,000 full-time equivalent (FTE) students with an increase equal to one percent of the total public school exceptional student education FTE, not including gifted students. The funding is calculated based on the FEFP grade level, the school district to which the student would have been assigned, and the matrix level of services generated by the students. The scholarship award is 97.5 percent of the calculated amount. However, unlike the Gardiner program where a student's full scholarship award is distributed at the beginning of the school year or upon program enrollment, scholarship awards under the new McKay-Gardiner program will be disbursed on a quarterly basis. The bill clarifies the responsibilities of both the SFO and the DOE in the eligibility verification process prior to the DOE releasing the scholarship funds to the SFO to be deposited in the student's account in four equal amounts by the established deadlines.

Similar to the Gardiner program, any remaining funds revert to the state after denial or revocation of scholarship eligibility by the commissioner for fraud or abuse, or after two consecutive fiscal years in which an account has been inactive or three consecutive years after high school completion or graduation during which the student is not enrolled in an eligible postsecondary educational institution or a program offered by the institution.

---

<sup>52</sup> See Section 1002.395(15), F.S.

<sup>53</sup> Since 2015, the Auditor General has conducted annual operational audits of the accounts and records of eligible nonprofit scholarship-funding organizations. As recent audits have not disclosed significant control deficiencies or noncompliance, the Legislature should consider amending ss. 11.45(2)(l), 1002.385(14)(a), and 1002.40(12)(a), F.S., to require the Auditor General to conduct operational audits at least once every 3 years of the accounts and records of eligible nonprofit scholarship-funding organizations. Auditor General, *Auditor General Annual Report 2020 November 1, 2019, Through October 31, 2020* (2020) available at [https://flauditor.gov/pages/pdf\\_files/annual%20report%202020.pdf](https://flauditor.gov/pages/pdf_files/annual%20report%202020.pdf) at 7.. Section 11.45(2)(f), F.S.

## Other K-12 Education Scholarship Programs

### Present Situation

#### *Florida Tax Credit (FTC) Scholarship Program*

The FTC program was established in 2001<sup>54</sup> to authorize private, voluntary contributions from corporate donors to eligible nonprofit SFOs that award tax credit scholarships to eligible children from low-income families.<sup>55</sup> State law requires the nonprofit SFOs to use the contributions received to provide scholarships to eligible students for the cost of private school tuition or transportation to a public school that is different from the school to which the student was assigned.

#### Student Eligibility

To be eligible for an award under the FTC program, a student must meet at least one of the following criteria:

- The student is on the direct certification list<sup>56</sup> or the student's household income level does not exceed 260 percent of the federal poverty level; or
- The student is currently placed, or during the previous state fiscal year was placed, in foster care or in out-of-home care as defined in law.<sup>57</sup>

Priority is given to a student whose household income level does not exceed 185 percent of the federal poverty level or who is in foster care or out-of-home care.

A sibling of a student who is participating in the scholarship program is eligible for a scholarship if the student resides in the same household as the sibling.

#### Program Prohibitions

A student is not eligible for a scholarship while he or she is enrolled in a public school or DJJ program; receiving another state educational scholarship pursuant to Florida law; enrolled in a home education or private tutoring program, or enrolled in the Florida School for the Deaf and the Blind. The student is also limited to participating in no more than two state-funded virtual courses per year.<sup>58</sup>

---

<sup>54</sup> Section 5, ch. 2001-225, L.O.F.

<sup>55</sup> The program allows a corporation to receive a dollar-for-dollar tax credit up to 100% of its state income tax liability. The program also includes credits against the insurance premium tax for contributions to eligible nonprofit SFOs, credits against severance taxes on oil and gas production, self-accrued sales tax liabilities of direct pay permit holders, and alcoholic beverage taxes on beer, wine, and spirits. The maximum amount the state may award is \$873 million in credits for the 2020-21 fiscal year. Department of Education, *Florida Tax Credit Scholarship Program September 2020 Quarterly Report* (2020), available at: <http://www.fldoe.org/core/fileparse.php/7558/urlt/FTC-Sept-2020-Q-Report.pdf>

<sup>56</sup> Direct certification list means the certified list of children who qualify for the food assistance program, the Temporary Assistance to Needy Families Program, or the Food Distribution Program on Indian Reservations provided to the Department of Education by the Department of Children and Families. Section 1002.395(2)(c), F.S.

<sup>57</sup> Section 1002.395(3), F.S.

<sup>58</sup> Section 1002.395(4), F.S.

### Eligibility Term

A student who initially receives a scholarship remains eligible to participate until the student graduates from high school or attains the age of 21 years, whichever occurs first, regardless of the student's household income level.<sup>59</sup>

### Scholarship Funding Tax Credits

A taxpayer may submit an application for a tax credit toward one or more contributions to an eligible nonprofit SFO that administers an educational scholarship program.<sup>60</sup>

### Scholarship-funding Organization Obligations

Nonprofit SFOs must comply with requirements relating to administration of the program, which include federal antidiscrimination laws, background checks, and private school choice. In addition, nonprofit SFOs must:

- Give first priority to eligible students who received an FTC program scholarship during the previous school year;
- Apply all funds available under the FTC program and the Hope program for renewal scholarship awards before awarding any initial scholarships;
- Provide a scholarship to an eligible student on a first-come, first-served basis unless the student qualifies for priority established in law;
- Refer any student eligible for an FTC program scholarship who did not receive a renewal or initial scholarship based solely on the lack of available funds through the FTC program or Hope program to another eligible nonprofit SFO that may have funds available;
- Not restrict or reserve scholarships for use at a particular private school or provide scholarships to a child of an owner or operator;
- Allow a student in foster care or out-of-home care or a dependent child of a parent who is a member of the United States Armed forces to apply for a scholarship at any time;
- Allow a student to attend any private school and transfer school during the school year;
- Maintain separate accounts for scholarship funds and operating funds;
- Provide the annual financial audit report to the Auditor General and the DOE.
- Submit quarterly reports to the DOE; and
- Maintain a surety bond.<sup>61</sup>

The nonprofit SFO may use up to three percent of the total amount of all scholarships awarded for administrative expenses. No more than 25 percent of the eligible contributions can be carried forward to the following state fiscal year. Prior to granting a scholarship, the nonprofit SFO must document the student's eligibility each year.

An organization that intends to participate in the program must annually submit an application to the Office of Independent Education and Parental Choice. Within 30 days of receipt of the application, the commissioner shall recommend approval to the State Board of Education. If an

---

<sup>59</sup> Section 1002.395(3), F.S.

<sup>60</sup> Section 1002.395(5), F.S.

<sup>61</sup> Section 1002.395(6), F.S.

existing nonprofit SFO is disapproved for renewal, all remaining funds held by the SFO must be transferred to other eligible nonprofit SFOs to provide scholarships for eligible students.<sup>62</sup>

#### Parent and Student Obligations

Parents must meet participation requirements for the FTC program, which include all of the following:<sup>63</sup>

- Selecting an eligible private school.
- Informing the child's school district when withdrawing their child to attend a private school.
- Remaining in attendance at the private school throughout the school year.
- Ensuring the student takes the norm-referenced assessment.
- Restrictively endorsing the warrant to the private school.

#### Private School Obligations

Private schools participating in the scholarship program must comply with the general laws governing private schools, pursuant to s. 1002.421, F.S., and must make provisions for students to take a nationally norm-referenced test and report the scores to the parent.<sup>64</sup>

#### Department of Education Obligations

The DOE has multiple obligations, including all of the following:

- Verifying the eligibility of each nonprofit SFO.
- Verifying the eligibility of expenditures.
- Cross-checking the list of participating students against the public school enrollment to avoid duplication.
- Maintaining a list of nationally norm-referenced tests.
- Issuing a project grant award every two years to a state university to which private schools must report the scores from the nationally norm-referenced tests.
- Notifying the nonprofit SFO of their eligible students and eligible students associated with other nonprofit SFOs.
- Requiring quarterly reports by nonprofit SFOs that would include information related to the scholarship participants and the private schools they attend.
- Providing a process to match the direct-certification list with the scholarship application data.<sup>65</sup>

#### School District Obligations

School districts are required to comply with multiple obligations, including:

- Notifying households that receive a free or reduced-price meal of the scholarship, upon request of the nonprofit SFO; and
- Implementing test administration of statewide assessments at private schools.<sup>66</sup>

---

<sup>62</sup> Section 1002.395(15), F.S.

<sup>63</sup> Section 1002.395(7), F.S.

<sup>64</sup> Section 1002.395(8), F.S.

<sup>65</sup> Section 1002.395(9), F.S.

<sup>66</sup> Section 1002.395(10), F.S.

### Scholarship Funding and Payment

During the 2019-20 school year, FTC program scholarships in the amount of \$670 million were awarded to a total of 111,219 students enrolled in 1,870 participating Florida private schools. The maximum scholarship amount per student in the 2019-2020 school year was \$7,408.<sup>67</sup> As of January 2021, 100,008 scholarships were awarded to students for the 2020-2021 school year.<sup>68</sup>

### ***Family Empowerment Scholarship (FES) Program***

The FES program was established in 2019<sup>69</sup> to provide educational options to eligible children of families with limited financial resources through a state funded school voucher scholarship. Similar to the McKay program,<sup>70</sup> the FES program is based on the FEFP allocation formula.

### Student Eligibility

To be eligible for an award under the FES program, a student must meet the following criteria:<sup>71</sup>

- The student is:
  - On the direct certification list pursuant to law or the student's household income level does not exceed 300 percent of the federal poverty level; or
  - Currently placed, or during the previous fiscal year was placed, in foster care or in out-of-home care as defined in law.
- The student is eligible to enroll in kindergarten or has spent the prior school year in attendance at a Florida public school. However, a dependent child of a member of the United States Armed Forces who transfers to a school in this state from out of state or from a foreign country due to a parent's permanent change of station orders or a foster child is exempt from the prior public school attendance requirement.
- The parent has obtained acceptance for admission of the student to a private school that is eligible for the program and the parent has requested a scholarship from the DOE at least 60 days before the date of the first scholarship payment.

A sibling of a student who is participating in the FES program is eligible for a scholarship if the student resides in the same household as the sibling.

The law specifies the following priority order for awarding FES scholarships:

1. An eligible student who received a FES program scholarship in the prior year.
2. An eligible student who is a renewal student from a different nonprofit SFO.
3. An eligible student who attended a public school the prior year and was on the direct certification list or the student was placed in foster care.
4. An eligible student who is eligible to enroll in kindergarten and was on the direct certification list or the student was placed in foster care.

---

<sup>67</sup> Florida Department of Education, *Fact Sheet, Florida Tax Credit Scholarship Program (2020)*, available at <https://www.fldoe.org/core/fileparse.php/5606/urlt/FTC-Sept-2020-line.pdf>.

<sup>68</sup> Florida Department of Education, *K-12 Scholarships*, Presentation to the Committee on Education, The Florida Senate (January 12, 2021), available at [https://www.flsenate.gov/Committees/Show/ED/MeetingPacket/4961/8839\\_MeetingPacket\\_4961.pdf](https://www.flsenate.gov/Committees/Show/ED/MeetingPacket/4961/8839_MeetingPacket_4961.pdf).

<sup>69</sup> Section 6, ch. 2019-21, L.O.F.

<sup>70</sup> See Section 1002.39(10), F.S.

<sup>71</sup> Section 1002.394(3), F.S.



5. An eligible student whose household income level does not exceed 300 percent of the federal poverty level and who attended a public school the prior year or is a renewal student from a different nonprofit SFO.<sup>72</sup>

The qualifying household income level of 300 percent may increase by 25 percent in any fiscal year in which more than five percent of the available scholarships authorized have not been awarded.

#### Eligibility Term

A student who receives a scholarship remains eligible to participate until the student graduates from high school or attains the age of 21 years, whichever occurs first, regardless of the student's household income level.<sup>73</sup>

#### Program Prohibitions

A student is not eligible for a scholarship while he or she is enrolled in a public school or DJJ program; receiving another state educational scholarship pursuant to Florida law; enrolled in a home education or private tutoring program, a virtual program that receives state funding pursuant to the student's participation, or enrolled in the Florida School for the Deaf and the Blind.<sup>74</sup>

#### School District Obligations

School districts must provide information on the district's website and inform all households within the district receiving free or reduced priced meals under the National School Lunch Act<sup>75</sup> of their eligibility to apply for the scholarship. School districts must also notify the student and parent about, and provide services for, statewide assessment participation.<sup>76</sup>

#### Department of Education Obligations

The DOE is required to:

- Publish information on the DOE website about the FES program, including student eligibility criteria, parental responsibilities, and relevant data;
- Cross-check the list of participating scholarship students with the public school enrollment lists before each scholarship payment is made to avoid duplication;
- Maintain and publish a list of nationally norm-referenced tests identified for purposes of satisfying the FES program testing requirement; and
- Establish and notify nonprofit SFO's of specified deadlines.<sup>77</sup>

---

<sup>72</sup> Section 1002.394(3), F.S.

<sup>73</sup> Section 1002.394(4), F.S.

<sup>74</sup> Section 1002.394(5), F.S.

<sup>75</sup> 42 U.S.C s. 1751, et seq. The National School Lunch Program (NSLP) is a federally assisted meal program operating in public and nonprofit private schools and residential child care institutions. It provides nutritionally balanced, low-cost or free lunches to children each school day. The program was established under the National School Lunch Act, signed by President Harry Truman in 1946. USDA Food and Nutrition Service, *National School Lunch Program*, <https://www.fns.usda.gov/nslp> (last visited Jan. 29, 2021).

<sup>76</sup> Section 1002.394(6), F.S.

<sup>77</sup> Section 1002.394(7), F.S.

Private School Obligations

Private schools participating in the scholarship program must comply with the general laws governing private schools, pursuant to s. 1002.421, F.S., and must provide all documentation required for a student's participation, including the student fee schedule. In addition, the private school must annually administer or make provision for participating students in grades three through ten to take one of the nationally norm-referenced tests identified by the DOE or take the statewide standardized assessments. A participating private school must report a student's scores to his or her parent and to a state university for the purpose of annual performance data reporting.<sup>78</sup>

Parent and Student Obligations

Parents must meet participation requirements for the FTC program, which include all of the following:

- Selecting an eligible private school.
- Requesting a scholarship at least 60 days prior to first scholarship payment.
- Informing the child's school district when withdrawing child to attend a private school.
- Remaining in attendance at the private school throughout the school year.
- Reviewing the private school's policies with the school principal or designee.
- Ensuring the student takes the norm-referenced assessment.
- Restrictively endorsing the warrant to the private school.<sup>79</sup>

Scholarship-funding Organization Obligations

An eligible nonprofit SFO:

- Must verify the household income level of students and submit the verified list of students and related documentation to the DOE;
- Must award scholarships in priority order as specified in law;
- May use up to one percent of the total amount of all FES program scholarships awarded for administrative expenses. The funds used for administrative expenses must originate from eligible tax credit contributions authorized under the FTC program and Hope program;<sup>80</sup>
- Must, in a timely manner, submit any information requested by the DOE relating to the scholarship; and
- Must notify the DOE of any violation by a parent or private school of FES program requirements.<sup>81</sup>

Scholarship Funding and Payment

The funding amount is based on the student's grade level and school district in which the student was assigned plus a share of most categorical programs.<sup>82</sup> The amount of the scholarship award

---

<sup>78</sup> Section 1002.394(8), F.S.

<sup>79</sup> Section 1002.394(9), F.S.

<sup>80</sup> Section 1002.395(6)(j), F.S.

<sup>81</sup> Section 1002.394(10), F.S.

<sup>82</sup> In addition to the basic amount for current operations for the FEFP specified in law, the Legislature may appropriate categorical funding for specified programs, activities, or purposes. Section 1011.62(6), F.S.

is equal to 95 percent of the calculated amount. The amount of the award is deposited quarterly in the student's account once the scholarship has been verified and approved.<sup>83</sup>

The FES program was initially established for up to 18,000 eligible students annually beginning with the 2019-2020 school year, and served 17,823.<sup>84</sup> Beginning in the 2020-2021 school year, the number of students participating in the FES annually increases by one percent of the state's total public school student enrollment.<sup>85</sup> As of January 2021, 36,384 scholarships were awarded to students for the 2020-2021 school year.<sup>86</sup>

### ***Hope Scholarship Program (Hope)***

The Hope program was established in 2018<sup>87</sup> as a tax credit scholarship program to provide the parent of a public school student in kindergarten through grade 12 an opportunity to transfer the student to another public school or to request a scholarship for the student to enroll in and attend an eligible private school if that student has been subjected to battery; harassment; hazing; bullying; kidnapping; physical attack; robbery; sexual offenses; threat or intimidation; or fighting at school.<sup>88</sup>

Once a parent or child submits a report of an incident, the school principal must provide a copy of the report to the parent and investigate the incident. Once the investigation is complete, or within 15 days after the incident was reported, whichever occurs first, the principal must notify the parent about the Hope program.<sup>89</sup>

### **Program Prohibitions**

A student is not eligible for a scholarship while he or she is enrolled in a public school or DJJ program; receiving another state educational scholarship pursuant to Florida law; enrolled in a home education or private tutoring program, or enrolled in the Florida School for the Deaf and the Blind. The student is also limited to participating in no more than two state-funded virtual courses per year.<sup>90</sup>

### **Eligibility Term**

The term of the scholarship continues until the student returns to public school or graduates from high school.<sup>91</sup>

---

<sup>83</sup> Section 1002.394(11), F.S.

<sup>84</sup> Florida Department of Education, *K-12 Scholarships*, Presentation to the Committee on Education, The Florida Senate (January 12, 2021), available at [https://www.flsenate.gov/Committees/Show/ED/MeetingPacket/4961/8839\\_MeetingPacket\\_4961.pdf](https://www.flsenate.gov/Committees/Show/ED/MeetingPacket/4961/8839_MeetingPacket_4961.pdf).

<sup>85</sup> Section 1002.394(11)(a), F.S.

<sup>86</sup> Florida Department of Education, *K-12 Scholarships*, Presentation to the Committee on Education, The Florida Senate (January 12, 2021), available at [https://www.flsenate.gov/Committees/Show/ED/MeetingPacket/4961/8839\\_MeetingPacket\\_4961.pdf](https://www.flsenate.gov/Committees/Show/ED/MeetingPacket/4961/8839_MeetingPacket_4961.pdf).

<sup>87</sup> Section 16, ch. 2018-6, L.O.F.

<sup>88</sup> Section 1002.40(1) and (6), F.S.

<sup>89</sup> Section 1002.40(6), F.S.

<sup>90</sup> Section 1002.40(4), F.S.

<sup>91</sup> Section 1002.40(5), F.S.

### School District Obligations

A school district is required to notify parents of the scholarship upon conclusion of the investigation about the opportunity to enroll in a different public school or attend an eligible private school.<sup>92</sup>

### Private School Obligations

Private schools participating in the scholarship program must comply with the general laws governing private schools, pursuant to s. 1002.421, F.S. and must annually administer or make provision for participating students in grades three through ten to take one of the nationally norm-referenced tests identified by the DOE or take the statewide standardized assessments.<sup>93</sup>

### Department of Education Obligations

The DOE is required to:

- Cross-check the list of participating scholarship students with the public school enrollment lists to avoid duplication;
- Maintain a list of nationally norm-referenced;
- Require quarterly reports by the nonprofit SFOs regarding the number of students and private schools enrolled; and
- Contract with an independent entity to annually evaluate the program.<sup>94</sup>

### Parent and Student Obligations

Parents must meet participation requirements for the Hope program, which include all of the following:<sup>95</sup>

- Selecting an eligible private school.
- Informing the child's school district when withdrawing child to attend a private school.
- Remaining in attendance at the private school throughout the school year.
- Ensuring the student takes the norm-referenced assessment.
- Restrictively endorsing the warrant to the private school.

### Scholarship-funding Organization Obligations

The scholarship is directly administered by state-approved nonprofit SFOs, which have multiple obligations, including.

- Reviewing applications to determine student eligibility.
- Notifying parents of their receipt of a scholarship.
- Establishing deadlines for parents to confirm participation.
- Awarding scholarships and giving priority to renewing students.
- Preparing quarterly reports to the DOE.
- Notifying the DOE of any violation.<sup>96</sup>

---

<sup>92</sup> Section 1002.40(6), F.S.

<sup>93</sup> Section 1002.40(7), F.S.

<sup>94</sup> Section 1002.40(8), F.S.

<sup>95</sup> Section 1002.40(9), F.S.

<sup>96</sup> Section 1002.40(10), F.S.

Auditor General Obligations

The Auditor General is required to conduct an annual operational audit of accounts and records of each organization that participates in the program.<sup>97</sup>

Scholarship Funding Tax Credit

A tax credit<sup>98</sup> is available for use by a person who makes an eligible contribution.<sup>99</sup> Eligible contributions used to fund the Hope program may be used to fund FTC scholarships, with conditions. A nonprofit SFO may carry forward to the next state fiscal year no more than five percent of net eligible contributions to the Hope program.<sup>100</sup>

Scholarship Funding and Payment

The Hope program served 388 students in the 2019-2020 school year. As of January 2021, 476 scholarships were awarded to students for the 2020-2021 school year.<sup>101</sup>

**Effect of Proposed Changes**

The bill modifies s. 1002.394, F.S., relating to the Family Empowerment Scholarship Program, s. 1002.395, F.S., relating to the Florida Tax Credit Scholarship Program, s. 1002.40, F.S., relating to the Hope Program, and related statutes.

***Family Empowerment Scholarship Program***

The bill incorporates the FTC program and Hope program into the FES program with a common set of eligibility requirements and scholarship award funding structure, expands the option under which a student may qualify for the FES program, and changes the program from a state funded school voucher program to an education savings account program. In addition, the bill modifies the purpose of the FES program to offer educational options to more families in addition to those with limited financial resources.

Student Eligibility

A student is eligible for an award under the FES program if the student is eligible to enroll in kindergarten through grade 12 and is:

- On the direct certification list or the student's household income does not exceed 300 percent of poverty; which is a higher maximum income level than the FTC program, which is 260% of the poverty level;
- Currently placed or placed during the previous fiscal year in foster or out-of-home care;

---

<sup>97</sup> Section 1002.40(12), F.S.

<sup>98</sup> The purchaser of a motor vehicle is granted a credit of 100 percent of an eligible contribution made to an eligible nonprofit scholarship-funding organization for the Hope Scholarship Program against any tax imposed by the state and collected from the purchaser by a dealer, designated agent, or private tag agent as a result of the purchase or acquisition of a motor vehicle, except that a credit may not exceed the tax that would otherwise be collected from the purchaser by a dealer, designated agent, or private tag agent. Section 212.1832(1), F.S.

<sup>99</sup> Section 1002.40(13), F.S.

<sup>100</sup> Section 1002.40(11)(i), F.S.

<sup>101</sup> Florida Department of Education, *K-12 Scholarships*, Presentation to the Committee on Education, The Florida Senate (January 12, 2021), available at

[https://www.flsenate.gov/Committees/Show/ED/MeetingPacket/4961/8839\\_MeetingPacket\\_4961.pdf](https://www.flsenate.gov/Committees/Show/ED/MeetingPacket/4961/8839_MeetingPacket_4961.pdf).

- A sibling of a participating student residing in the same household;
- Enrolled in a public school and reported an incident of being subjected to battery; harassment; hazing; bullying; kidnapping; physical attack; robbery; sexual offenses, threat or intimidation; or fighting at school; or
- A sibling of a McKay-Gardiner scholarship recipient if the student resides in the same household and attends the same school as the qualifying sibling.

The bill removes the requirement that a student must spend the prior year in attendance at a Florida public school. Therefore, under the bill students participating in a home education or private tutoring program may be eligible to apply for a scholarship, which may likely increase the number of families eligible for an award under the FES program.

The bill establishes scholarship award priorities in the following order:

- A student who received an FTC, Hope, or FES program award in the 2020-2021 school year.
- A student who was retained on the previous school year's wait list.
- A student placed in foster care, a sibling of a participating student, or a student who reported an incident of being subjected to battery; harassment; hazing; bullying; kidnapping; physical attack; robbery; sexual offenses; threat or intimidation; or fighting at school.
- A student whose household income does not exceed 185 percent of the federal poverty level.
- A student whose household income does not exceed 300 percent of the federal poverty level.
- A student who is a sibling of a McKay-Gardiner scholarship recipient, who resides in the same household and attends the same school.

#### Eligibility Term

The bill adds to the FES program similar policies from the Gardiner program relating to scholarship terms.

#### Commissioner of Education Obligations

The bill adds to the FES program similar policies from the Gardiner program relating to commissioner responsibilities. The bill specifies that any remaining funds revert to the state after denial or revocation of scholarship eligibility by the commissioner for fraud or abuse, or after two consecutive fiscal years in which an account has been inactive or two consecutive years after high school completion or graduation during which the student is not enrolled in an eligible postsecondary educational institution or a program offered by the institution.

#### Program Prohibitions

The bill removes the restriction that a student is ineligible if he or she is enrolled in a home education program or participate in a private tutoring program.

#### Authorized Use of Funds

The bill modifies the FES program from an award that covers tuition only for enrollment in a private school to an education savings account program and authorizes parents to use scholarship funds to meet the educational needs of their children. These authorized uses include all of the following:

- Instructional materials including school equipment and supplies, and digital devices and internet access.
- Curriculum including teacher's manuals.
- Tuition and fees, including tuition and fees for a private virtual school meeting certain requirements, fees for summer and after-school programs, a part-time tutor approved by DOE, and annual assessments and evaluations.
- Transportation expenses not to exceed \$750 per year.

#### School District Obligations

The bill maintains current FES requirements and adds that the district must notify the parents of the scholarship upon conclusion of the investigation for a student who was a victim of bullying or other qualified incident. The bill requires school districts to notify parents about the scholarship and removes the requirement for school districts to report scholarship students for funding.

#### Department of Education Obligations

The bill maintains the current FES requirements for the DOE and adds the following provisions:

- Contracting with an independent entity to annually evaluate the program.
- Verifying the eligibility of expenditures.
- Distributing scholarship funds to nonprofit SFOs on a quarterly basis.
- Maintaining a list of approved providers.
- Issuing a project grant award every two years to a state university to which private schools must report the scores from the nationally norm-referenced tests.
- Notifying the SFO of its eligible students and the eligible students associated with other nonprofit SFOs.
- Requiring quarterly reports by nonprofit SFOs that would include information related to the scholarship participants and the private schools they attend.
- Providing a process to match the direct-certification list with the scholarship application data.
- Investigating any written complaint of a violation.

#### Parent and Student Obligations

The bill includes provisions that parents must meet to maintain eligibility, including annually submitting a sworn compliance statement similar to the McKay-Gardiner program. Additionally, parents must renew the scholarship by a date set and in a format determined by the nonprofit SFO. The bill modifies specific parent responsibilities relating to private schools by removing provisions requiring that the student must attend a private school, and modifying assessment provisions for parents who choose to send their child to a private school.

#### Scholarship-funding Organization Obligations

The bill specifies that nonprofit SFOs must comply with a number of requirements similar to the McKay-Gardiner program to administer the FES program, and allows for nonprofit SFOs to use up to 2.5 percent of the calculated funding for administrative purposes if the nonprofit SFO has operated as a nonprofit SFO for at least the preceding three fiscal years without any findings in its most recent annual financial audit. In addition, the bill maintains that nonprofit SFOs must:

- Verify household income;
- Allow specified eligible students to apply for a scholarship at any time; and
- Have an annual financial audit conducted by an independent certified public accountant.

The bill clarifies that the nonprofit SFO is a renewing organization if it was approved by the State Board of Education for the 2021-2022 fiscal year. In addition, the bill also retains the nonprofit SFO application process from the FTC program.<sup>102</sup>

#### Scholarship Funding and Payment

The bill establishes a new enrollment cap, for the 2021-2022 school year, of 175,000 student FTE, which includes the prior year FES, FTC, and Hope program recipients and maintains the current annual growth of one percent of the public school student enrollment. The scholarship funding is calculated based on the FEFP and includes the grade level and the district school to which the student would have been assigned. The bill increases the scholarship award from 95 percent to 97.5 percent of the calculated amount. An eligible student may alternatively choose a transportation award of \$750 to attend a public school outside of their assigned school district. Students who receive a transportation awards are not counted against the 175,000 enrollment cap. The bill requires nonprofit SFOs to report student enrollment to the DOE at the time of each student membership survey and specifies that an FTE shall be equal to four quarterly scholarship payments. The bill clarifies the responsibilities of both the SFO and the DOE for the student eligibility verification process prior to the DOE releasing the scholarship funds to the SFO to be deposited in the student's account in four equal amounts by the established deadlines.

#### Private School Obligations

In addition, the bill:

- Requires private schools participating in the scholarship program to comply with current law,<sup>103</sup> and allows a private school to discount tuition if the private school deems it necessary; and

#### Auditor General Obligations

Similar to public school districts, the bill requires the Auditor General to conduct an operational audit on an approved nonprofit SFO at least once every three years,<sup>104</sup> rather than annually as currently required under the Gardiner program.

#### ***Florida Tax Credit Scholarship Program***

The bill modifies the catchline of s. 1002.395, F.S. from the Florida Tax Credit Scholarship Program to the Florida K-12 Education Funding Tax Credit Program. The bill enables taxpayers

---

<sup>102</sup> See Section 1002.395(15), F.S.

<sup>103</sup> Section 1002.421, F.S.

<sup>104</sup> Since 2015, the Auditor General has conducted annual operational audits of the accounts and records of eligible nonprofit scholarship-funding organizations. As recent audits have not disclosed significant control deficiencies or noncompliance, the Legislature should consider amending ss. 11.45(2)(l), 1002.385(14)(a), and 1002.40(12)(a), F.S., to require the Auditor General to conduct operational audits at least once every 3 years of the accounts and records of eligible nonprofit scholarship-funding organizations. Auditor General, *Auditor General Annual Report 2020 November 1, 2019, Through October 31, 2020* (2020) available at [https://flauditor.gov/pages/pdf\\_files/annual%20report%202020.pdf](https://flauditor.gov/pages/pdf_files/annual%20report%202020.pdf) at 7.. Section 11.45(2)(f), F.S.



to designate portions of certain tax payments as contributions to K-12 education funding. The bill also requires that contributions be deposited into a designated student fund and used for K-12 education funding.

The bill removes other substantive provisions and incorporates certain provisions into the FES program, including:

- Obligations of eligible nonprofit SFO's;
- Obligations of the DOE; and
- Nonprofit SFO application requirements.

### ***Hope Scholarship Program***

The bill modifies the catchline of s. 1002.40, F.S., from the Hope Scholarship Program to the Florida K-12 Education Funding Tax Credit Program. The bill enables taxpayers to designate portions of certain tax payments as contributions to K-12 education funding. The bill also requires that eligible contributions be deposited into a designated student fund and used for K-12 education funding.<sup>105</sup>

The bill removes other substantive provisions and incorporates certain provisions into the FES program, including:

- Eligibility requirements; and
- Requiring an annual evaluation of public schools with ten or more students transferring to another public school or private school due to bullying or other qualifying incident.

### ***Other Bill Provisions***

The bill also:

- Modifies other tax credit-related statutes to conform to the bill.
- Requires tax credit contributions held by the SFO to be deposited into the designated fund for K-12 funding.
- Requiring a dealer who claims the tax credit to file returns and pay taxes by electronic means.
- Authorizes any unused tax credits approved before July 1, 2021 to continue in effect, but the remittance must be made to the designated fund for K-12 funding.
- Modifies controlled open enrollment preferential treatment<sup>106</sup> to include McKay-Gardiner program award recipients for students choosing to attend a public school other than the one assigned.
- Allows for a private virtual school with a least one administrative office located in the state to meet the physical location requirement for a private school participating in the state school

---

<sup>105</sup> Under current law, a taxpayer makes an eligible contribution to a nonprofit SFO and receives a credit against any tax due as a result of buying a motor vehicle. Because the contribution is made directly to the nonprofit SFO, which also distributes scholarship funds, the law prohibits the taxpayer from designating funds to a particular student as a beneficiary of the contribution. However, under the bill contributions are no longer made directly to the nonprofit SFO. The taxpayer may designate a portion of the taxes paid to K-12 education funding, to be deposited into a specified state fund. Because contributions under the bill are not made directly to a nonprofit SFO this prohibition specified in law is no longer necessary.

<sup>106</sup> Section 1002.31(2)(c), F.S.

scholarship program and requires specified communication requirements to be posted on the private virtual school's website.

- Includes the teacher salary allocation in the per student scholarship amount calculation, which is currently excluded under s. 1011.62(18), F.S.
- Creates s. 1011.687, F.S., to provide a funding allocation to implement the McKay-Gardiner Scholarship and the Family Empowerment Scholarship, and defines an FTE for the purpose of the allocation to be equivalent to four quarterly scholarship payments.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

None.

##### **B. Public Records/Open Meetings Issues:**

None.

##### **C. Trust Funds Restrictions:**

None.

##### **D. State Tax or Fee Increases:**

None.

##### **E. Other Constitutional Issues:**

None.

#### **V. Fiscal Impact Statement:**

##### **A. Tax/Fee Issues:**

The tax impact for PCS/CS/SB 48 is indeterminate. The effect on taxes and tax credits will be determined by an impact conference conducted by the Revenue Estimating Conference.

##### **B. Private Sector Impact:**

Additional eligible families may have the opportunity to use scholarship funds for private school and educational services to meet the educational needs of their children. There may also be increased usage of private educational services as authorized in the bill. In addition, certain taxpayers may designate funding for education through authorized tax credits.

**C. Government Sector Impact:**

The impact on state funding is indeterminate. The state funding will depend on an official estimate of student full-time equivalent (FTE) participation in the scholarship programs for the 2021-2022 school year, an official estimate of the amount of revenue that will be transferred into the Florida Education Finance Program (FEFP), and the amount of state funds allocated to the FEFP through the General Appropriations Act and implementing legislation.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 11.45, 211.0251, 212.099, 212.1831, 212.1832, 213.053, 220.1105, 220.13, 220.186, 220.1875, 561.1211, 624.51055, 1002.20, 1002.23, 1002.31, 1002.394, 1002.395, 1002.40, 1002.411, 1002.421, 1009.971, 1009.98, 1009.981, 1011.61, and 1011.62.

This bill creates the following sections of the Florida Statutes: 1002.381 and 1011.687.

This bill repeals the following sections of the Florida Statutes: 1002.385 and 1002.39.

**IX. Additional Information:****A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**Recommended CS/CS by the Appropriations Subcommittee on Education on February 17, 2021:**

The CS/CS makes the following changes to the bill:

- Adds that the nonprofit scholarship funding organization (SFO) determines the format for annual scholarship renewal and clarifies that an SFO is only required to secure a single surety bond.
- Incorporates into the Family Empowerment Scholarship SFO qualifying language currently in the Florida Tax Credit Scholarship Program (FTC) requiring the SFO to have operated for at least 3 years and not have any material findings in order for the SFO to use specified funds for administrative purposes.
- Clarifies that an SFO is a renewing organization if it was approved by the State Board of Education for the 2021-2022 fiscal year or after.
- Adds teacher-parent and teacher-student communication requirements a private virtual school must post online.

- Establishes the Education Scholarship Program Allocation in statute to provide funds to implement the McKay-Gardiner and Family Empowerment Scholarship (FES) programs and specifies that scholarship amounts may not be revised during the fiscal year.
- Requires eligible tax credit contributions held by an SFO to be deposited into a designated fund for K-12 funding.
- Authorizes that any unused tax credit approved before July 1, 2021, continues in effect, but the remittance must be made to the designated fund for K-12 funding.
- Clarifies that instructional materials include school equipment and supplies.
- Adds that funds may be used to pay for tuition and fees at a private virtual school that meets specified requirements.
- Does not restrict a child of private school owner or operator from applying for a scholarship if he or she meets the eligibility requirements.
- Allows the DOE to approve a private tutor for part-time instruction.
- Removes the prior scholarship growth rate of 7% for McKay-Gardiner and revises it to a 1% increase of the state's total public school exceptional student education student enrollment, not including gifted students.
- Requires school districts to accept the diagnosis from a licensed professional and consider the service plan recommended for a McKay-Gardiner scholarship recipient requesting an IEP evaluation.
- Establishes a new cap for the 2021-2022 school year of 175,000 student FTE for FES which includes 2020-2021 FES, FTC and Hope scholarship recipients.
- Adds that a sibling of a McKay-Gardiner scholarship may receive an FES scholarship if the student resides in the same household and attends the same school as the sibling. Such students must be considered last in award priorities.
- Modifies the transportation award, limiting the award to only students traveling to a school outside of their zoned school district, and requires that a student who receives the transportation award does not count against the cap.

**CS by Education on February 3, 2021:**

The committee substitute makes a technical change to redesignate paragraphs in s. 1002.395, F.S.

**B. Amendments:**

None.